

## 1 HOUSE BILL NO. 2259

## 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the House Committee for Courts of Justice

4 on \_\_\_\_\_)

5 (Patron Prior to Substitute--Delegate Cordoza)

6 A BILL to amend and reenact §§ 20-49.10 and 32.1-257 of the Code of Virginia, relating to paternity;  
7 genetic tests to determine parentage; relief from paternity.

8 **Be it enacted by the General Assembly of Virginia:**9 **1. That §§ 20-49.10 and 32.1-257 of the Code of Virginia are amended and reenacted follows:**10 **§ 20-49.10. Relief from legal determination of paternity.**

11 An individual may file a petition for relief and, except as provided herein, the court ~~may~~ shall set  
12 aside a final judgment, court order, administrative order, obligation to pay child support, or any legal  
13 determination of paternity if a scientifically reliable genetic test performed in accordance with this chapter  
14 establishes the exclusion of the individual named as a father in the legal determination, except for good  
15 cause shown that such relief is not in the best interest of the child pursuant to the factors set forth in § 20-  
16 124.3. The court shall appoint a guardian ad litem to represent the interest of the child. The petitioner shall  
17 pay the costs of such test. A court that sets aside a determination of paternity in accordance with this  
18 section shall order completion of a new birth record and may order any other appropriate relief, including  
19 setting aside an obligation to pay child support. No support order may be retroactively modified, but may  
20 be modified with respect to any period during which there is a pending petition for relief from a  
21 determination of paternity, but only from the date that notice of the petition was served on the nonfiling  
22 party.

23 A court shall not grant relief from determination of paternity if the individual named as father (i)  
24 acknowledged paternity knowing he was not the father, (ii) adopted the child, or (iii) knew that the child  
25 was conceived through artificial insemination.

26 **§ 32.1-257. Filing birth certificates; from whom required; signatures of parents.**

27           A. A certificate of birth for each live birth that occurs in the Commonwealth shall be filed with the  
28 State Registrar within seven days after such birth. The certificate of birth shall be registered by the State  
29 Registrar if it has been completed and filed in accordance with this section.

30           B. When a birth occurs in an institution or en route thereto, the person in charge of such institution  
31 or an authorized designee shall obtain the personal data, and prepare the certificate either on forms  
32 furnished by the State Registrar or by an electronic process as approved by the Board. Such person or  
33 designee shall, if submitting a form, secure the signatures required by the certificate. The physician or  
34 other person in attendance shall provide the medical information required by the certificate within five  
35 days after the birth. The person in charge of the institution or an authorized designee shall certify to the  
36 authenticity of the birth registration either by affixing his signature to the certificate or by an electronic  
37 process approved by the Board, and shall file the certificate of birth with the State Registrar within seven  
38 days after such birth.

39           C. When a birth occurs outside an institution, the certificate shall be prepared on forms furnished  
40 by the State Registrar and filed by one of the following in the indicated order of priority, in accordance  
41 with the regulations of the Board:

- 42           1. The physician in attendance at or immediately after the birth, or in the absence of such physician,  
43           2. Any other person in attendance at or immediately after the birth, or in the absence of such a  
44 person,  
45           3. The mother, the other parent, or, in the absence of the other parent and the inability of the  
46 mother, the person in charge of the premises where the birth occurred.

47           C1. When a birth occurs on a moving conveyance within the United States of America and the  
48 child is first removed from the conveyance in this Commonwealth, the birth shall be registered in this  
49 Commonwealth and the place where the child is first removed from the conveyance shall be considered  
50 the place of birth. When a birth occurs on a moving conveyance while in international waters or air space  
51 or in a foreign country or its air space and the child is first removed from the conveyance in this  
52 Commonwealth, the birth shall be registered in this Commonwealth although the certificate shall indicate  
53 the actual place of birth insofar as can be determined.

D. If the mother of a child is not married to the natural father of the child at the time of birth or was not married to the natural father at any time during the 10 months next preceding such birth, the name of the father shall not be entered on the certificate of birth without a sworn acknowledgment of paternity, executed subsequent to the birth of the child, of both the mother and of the person to be named as the father. In any case in which a final determination of the paternity of a child has been made by a court of competent jurisdiction pursuant to § 20-49.8, from which no appeal has been taken and for which the time allowed to perfect an appeal has expired, the name of the father and the surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

Children born of marriages prohibited by law, deemed null or void, or dissolved by a court shall nevertheless be legitimate and the birth certificate for such children shall contain full information concerning the other parent.

For the purpose of birth registration in the case of a child resulting from assisted conception, pursuant to Chapter 9 (§ 20-156 et seq.) of Title 20, the birth certificate of such child shall contain full information concerning the mother's spouse as the other parent of the child and the gestational mother as the mother of the child. Donors of sperm or ova shall not have any parental rights or duties for any such child.

In the event that any person desires to have the name of the father entered on the certificate of birth based upon the judgment of paternity of a court of another state, such person shall apply to an appropriate court of the Commonwealth for an order reflecting that such court has reviewed such judgment of paternity and has determined that such judgment of paternity was amply supported in evidence and legitimate for the purposes of Article IV, Section 1 of the Constitution of the United States.

If the order of paternity should be appealed, the registrar shall not enter the name of the alleged father on the certificate of birth during the pendency of such appeal. If the father is not named on the certificate of birth, no other information concerning the father shall be entered on the certificate.

E. Prior to the entry of an alleged father on the certificate of birth, such alleged father shall be informed of the option to request the administering of scientifically reliable genetic tests, including blood tests, to determine paternity. When a birth occurs in an institution or en route thereto, such alleged father

81 shall be informed of such option by the person in charge of such institution or an authorized designee.  
82 When a birth occurs outside an institution, such alleged father shall be informed of such option by a health  
83 care provider in attendance at or immediately after the birth. If the alleged father chooses to exercise such  
84 option, the administering of any such test shall occur as soon as practicable by the institution if the  
85 institution has the ability to administer such a test; reasonable delays of the administering of such test shall  
86 be permissible. Only if the institution does not have such an ability may a third-party testing facility be  
87 used.

88 F. Either of the parents of the child shall verify the accuracy of the personal data to be entered on  
89 the certificate of birth in time to permit the filing within the seven days prescribed above.

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